

(H.J.R. 4)

CONSTITUTIONAL AMENDMENT A

JOINT RESOLUTION REGARDING SECRET BALLOT

2009 GENERAL SESSION

SENATE: 21-8-0

HOUSE: 53-22-0

BALLOT TITLE

☐ **FOR**

☐ **AGAINST**

Shall the Utah Constitution be amended to specify that elections currently required to be by secret ballot include elections under state or federal law for public office, on an initiative or referendum, or to designate or authorize employee or individual representation?

IMPARTIAL ANALYSIS

Current provisions of the Utah Constitution

The Utah Constitution currently requires all elections to be by secret ballot. That requirement probably already applies to elections to select public officers and elections under state law on initiatives or referenda. However, because the scope of the requirement that "all elections" be by secret ballot is not defined in case law, it is unclear exactly which elections are included within the scope of the requirement.

Effect of Constitutional Amendment A

Constitutional Amendment A modifies the scope of the secret ballot requirement. Unless preempted by federal law, the Amendment requires specific types of elections to be by secret ballot.

The Amendment specifies that elections required to be held by secret ballot include elections under state or federal law for public office, on an initiative or referendum, or to designate or authorize employee or individual representation. An election to designate or authorize employee representation would probably include an election to determine whether or not to form a union or to determine union representation.

Effective Date

If approved by voters, Constitutional Amendment A takes effect January 1, 2011.

Fiscal Impact

Constitutional Amendment A will have no direct, measurable impact on state or local government costs or revenues.

ARGUMENT FOR

The secret ballot is a voting method in which your voting choices are confidential. The key aim is to ensure you can cast your vote free from intimidation or bribery.

America first used secret ballots to protect the rights of recently freed slaves after the Civil War. Voter intimidation during southern reconstruction was rampant; African American first-time voters being threatened with physical violence, even lynching, based on how they cast their publicly known ballots.

The secret ballot guarantees that your private opinion counts, not the person peering into your private voting booth. Open ballots are not truly free for people who disagree with the powerful.

ARGUMENT FOR (CONTINUED)

From the lynching of freed American slaves who dared to vote, to the purple-stained thumbs of voters in newly freed countries, the right to a secret ballot has been won through the spilled blood of freedom-loving patriots. It is the hallmark of a free society that must never be abridged.

Unfortunately the secret ballot is under attack right here in America. President Barack Obama and big labor union bosses are on the verge of passing legislation called the "Employee Free Choice Act," also known as "card check: If they succeed, card check will deny employees the right to cast a secret ballot in union organizing elections.

Rather than holding a monitored workplace election using secret ballots (as has been the case for decades) under Big Labor's card check proposal the union would automatically be created in businesses (with more than ten employees) once the union collects "authorization cards" signed by a majority of the employees. Importantly, under card check, employees wouldn't be able to sign an authorization card privately. Friends, co-workers and union bosses would know exactly who has signed and who hasn't, and could use pressure and intimidation to coerce hold-outs to sign an authorization card.

No questions. No debate. No secret ballot. You're unionized.

The right to vote in private, free from coercion or intimidation, is one of the pillars of our nation and transcends partisanship.

This amendment to the Utah Constitution is simple and straight forward. It simply says that all elections, including elections for employee representation, shall be by secret ballot. By locking this right of secret ballots into the Utah Constitution, Utah will have taken strong and decisive action to guarantee that your right to a secret ballot shall not be infringed. Utah voters cast their votes free from fear of retribution from their government. You deserve the same right to be free of fear of retaliation from their union, their employer and their fellow employees.

If we do not stand up for the secret ballot today, what rights will we be fighting to hold onto tomorrow?

Vote FOR Constitutional Amendment A.

- Representative Carl Wimmer

- Senator Howard Stephenson

ARGUMENT AGAINST

Utah's Founding Fathers carefully crafted the Utah Constitution. We believe they got it right the first time. Amending our state Constitution should be undertaken cautiously and only when absolutely necessary and after sound deliberation. It should not be amended cavalierly or for cynical political purposes.

Since its ratification in 1896 the Utah Constitution has guaranteed that "All elections shall be by secret ballot." Amendment A attempts to change the guarantee of election by secret ballot. There is no good reason to meddle with this established tradition now.

Amendment A is a classic example of a solution in search of a problem. The proponents of Amendment A argue that this proposed amendment is necessary to guarantee that our elections are conducted by secret ballot. This is simply not true and ignores the fact that the Utah Constitution as drafted by our state Founding Fathers included in Article IV, Section 8 the guarantee that "All elections shall be by secret ballot." This simple and unambiguous rule has been the law of our land for more than a century. There is no doubt that our elections are conducted by secret ballot. Our secret ballot does not need saving. This right is secure under our current Constitution. In other words, if it isn't broken, don't fix it.

Sadly, Amendment A is nothing more than a "message" bill, imported to Utah from out-of-state. Amendment A is a misguided and cynical attempt to nullify a legislative proposal pending in Congress that seeks to modernize and reform one aspect of our labor laws. Amendment A's proponents will suggest that the Employee Free Choice Act will do away with elections by secret ballot, but this is nonsense. In reality, Amendment A's proponents know that federal law will likely

ARGUMENT AGAINST (CONTINUED)

supersede this proposed amendment but they are more interested in using our Constitution to provoke a costly lawsuit than in maintaining the sanctity and integrity of the Utah Constitution. We should not let outsiders manipulate us and our state Constitution for their own political agenda.

Amendment A is also flawed in that the Utah Constitutional Revision Commission ("CRC") did not approve the amendment and Amendment A was rushed through the Utah Legislature without proper debate and deliberation. The CRC is the bipartisan body composed of citizens and legislators that is tasked with the responsibility of carefully studying and reviewing proposed constitutional amendments to ensure they are necessary and sound. The CRC was only given half an hour to review Amendment A and ultimately did not approve the amendment. In addition, Amendment A was not considered by the Utah Senate under the regular rules for debating and voting. Instead, Amendment A was rushed through after the rules were suspended. Amendment A was not given the appropriate deliberation and consideration that should be given to a proposal to amend our most important governing document. The Utah Constitution deserves a better process and more consideration.

We should all vote NO on Amendment A.

- Representative David Litvack
Minority Leader, Utah House of Representatives

- Senator Ben McAdams
Senator, Utah State Senate

COMPLETE TEXT CONSTITUTIONAL AMENDMENT A

Utah Constitution Sections Affected:

AMENDS:

ARTICLE IV, SECTION 8

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Utah Constitution Article IV, Section 8, to read:

Article IV, Section 8. [Election to be by secret ballot.]

(1) All elections, including elections under state or federal law for public office, on an initiative or referendum, or to designate or authorize employee representation or individual representation, shall be by secret ballot.

(2) Nothing in this section [shall] may be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election[: Provided, That], as long as secrecy in voting [be] is preserved.

Section 2. **Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 3. **Effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2011.
